

THE ETHICS OF EXECUTION

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5-16-C22-73-1

April 14, 1973

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The years 1972 and 1973 are of historic significance in the field of the ethics of execution. Execution is defined in the World Book Dictionary as, "a putting to death according to law." Supreme Court decisions in June 1972 and January 1973 completely reversed the legal perspective of the traditional value of the right to life. In June 1972, after several years of legal battles, the Death Penalty was ruled to be unconstitutional on the grounds of the Eighth Amendment to the Constitution prohibiting "cruel and unusual punishment." This means that the perpetrator of a capital crime is guaranteed protection from receiving capital punishment as a consequence of being found guilty of the crime. More recently, on January 22, 1973, this

same Supreme Court ruled in favor of abortion on demand. A pregnant woman and her physician were granted the authority to execute the fetus within her at any time during the first twelve weeks of her pregnancy, without any qualifications. During the second twelve weeks of pregnancy a state can limit abortions only in that it can take steps to protect the mother's health by prescribing who can perform abortions and where the abortions can be performed. During the last ten weeks of the pregnancy abortions may still be performed to protect the health and life of the mother. The health of the mother is construed to include psychological as well as physical health. Medical authorities assume that this would apply to such problems as abortions to prevent the birth of a child with serious congenital defect.¹

There is a third movement presently afoot to have the practice of euthanasia legalized. If this movement reaches fruition then a complete reversal of the ethics concerning the value of human life will have taken place. The ancient values of the Judeo-Christian tradition clearly uphold the sacred character of human life. From conception to the grave, human life is considered to be an act of Divine Creation. Since life comes from God the most appalling crime is the destruction of that life. The fundamental principle of the Sixth Commandment rests in the belief that man is created in the image of God.

¹"Questions Left Unanswered by Ruling on Abortion," The New York Times, Jan. 24, 1973, p. 14.

Then what is the criteria, what is the ethic, which allows a perfect consistency in the matter of execution?

Recognition of the right to life has been continuously protected. Philosophically the idea of personal freedom has always embraced the idea of a right to life. Everyman ought to have the freedom to live his own life as he sees fit as long as that living does not interfere with the right of some other human being to live also. But it is precisely this living in relation to other human beings that has caused the milieu of ethical problems. What do we do when the freedoms of two individuals come into conflict? Ancient philosophies of a non-Christian nature, upheld the right of the strong to enslave the weak. The power of the lord was one of life and death over his subjects. Our society has pretty well rejected the ethics of slavery but with this rejection it seems that the concept of social responsibility has also gone askew.

The Pentateuch speaks directly to the responsibility of man to live in society. Life was held to be a sacred gift. The murderer had taken away or destroyed that which was uniquely given by God. The ethical question now becomes, "What do we do with the murderer?" W. S. Bruce, in his book, The Ethics of the Old Testament, deals with the problem in the following fashion.

"The murderer in Israel was adjudged worthy of death. Only if it could be proved that intent and malice were absent might the capital punishment be converted into a penalty of less degree. But in the Book of Genesis it is explicitly stated, "Whoso sheddeth man's blood, by man shall his blood be shed." It is clear,

therefore, that the general prohibition of the commandment cannot be held as excluding the infliction of the last penalty of the law. For besides the enunciation of that general principle in Genesis, the same injunction is frequently repeated in the legislation of Leviticus and Dueteronomy. A man who has committed the crime of murder has therefore forfeited the right to live. No less was it held that self-defense might justify an Israelite in killing the man who attacked him with murderous intent. And when such defense of self required the defense of one's own hearth and household against a public enemy, the exception was extended to the case of war. At the same time, the law which prohibits murder no less dondemns every unjust war of revenge or aggression. That bloodshed alone is justifiable which is in defense of a nation's existence and liberties."²

The Christian ethicist will immediately point out that this concept of executing the murderer does not fit the New Testament concept of forgiveness and non-retaliation. The arguments on both sides of the capital punishment question quote New Testament scripture to substantiate their position. However, both arguments do recognize that all scripture holds life to be the gift of God. Once again the ethical problem is what to do when two people come into conflict with each other.

Organized society with its legal approach tries to be just, fair, and factual. The basic document of our law is the Constitution. The Fifth Amendment to the Constitution states, "No person shall be . . . deprived of life, liberty, or property, without due process of law. . ." The Fourteenth Amendment extends this to say that "no state shall deprive any person of

²W. S. Bruce, The Ethics of The Old Testament, (New York, New York: Charles Scribner's Sons, 1960), p. 150.

life, liberty or property without due process of law." The due process of law is an attempt to insure that no one will be executed without first having the opportunity to defend himself against the accusation in a court of law. Laws are an attempt by organized society to provide some sort of guardianship for human rights and human life. The organization of society was motivated in part by an ethic which values human life. The enigma which confronts us is that the laws which were enacted to protect the right to life of every human being are now being interpreted to protect those who disregard the concept of the sanctity of human life, that is the murderer, the abortionist, and the practitioner of euthanasia rather than the victims of their practices. In the light of recent legislative actions and Supreme Court decisions can we honestly say that this country believes in the right of every human to have life? The thrust of legislative actions and judicial proceedings have indicated that our society believes that first, the murderer has a right to life in spite of his disregard for the lives of others; but secondly, the unborn babe, the deformed, and the chronically or terminally ill, who have not disregarded nor dishonored the right to life of others, are denied that right. This seems to be a perversion of good ethical values. How do we come to the place wherein we say that the guilty must live but the innocent must die?

There are some factors which present a thread of consistency for this new ethic. First, there is the collective conscience,

which may be described as the pervasive emotional set of society. This collective conscience impacts directly on the attitude toward capital punishment. The desire to abolish capital punishment is not based on the severity of the punishment (as strange as that may seem) but upon a distrust of the judicial system.³ We have been well conditioned by the stories and movies of the innocent man who was convicted of a murder that he did not commit. The fear of a mistake by sentencing an innocent man to death is often cited by McClellan as a reason for abolishing the death penalty. Execution is irrevocable, there is no way that a death penalty, once executed, can be taken back and life restored. The public conscience is generally dismayed at the tragedy of ending the life of a healthy adult because of the loss of the possible potential for good.

The impact of the science of psychology on our general knowledge has helped to shape the collective conscience. The prevalent idea from psychology being that man is essentially good. This is in conflict, of course, with the theological position of Augustine and Calvin and others who believed in the total depravity of the natural man. James Coleman in Psychology and Effective Behavior states that man is essentially good and that "aggression and cruelty are viewed as pathological behavior resulting from the denial, frustration, or distortion

³ Grant S. McClellan, gen. ed. Capital Punishment, (New York, New York: The H. W. Wilson Company, 1961) p. 23.

of man's essential nature."⁴ Coleman goes on to quote Carl Rogers' view of human personality as being essentially good.

The interesting aspect of our society's collective conscience is that it rationalizes about the right to life in an inconsistent manner. The simplified arguments are as follows. The criminal has human dignity and worth therefore he must be preserved. However, the destruction of the fetus is justified by a depersonalization of that fetus which is in effect a robbing of that embryo of its humanity. And the argument proceeds that since the embryo is not human it does not have a right to life. The mental gymnastics of euthanasia are even trickier. The maimed, the retarded and the advanced geriatric patient are considered to be human and therefore that gives them a right to life. But since living brings to these patients pain, discomfort, or a supposed shame and embarrassment, then the merciful thing to do is to put them out of their misery. Legalized euthanasia gives the right of decision to the one providing care and not to the patient. This in effect takes the right to life away from the patient.

The decision of the Supreme Court which legalized abortion was the culmination of an unrelenting drive by the pro-abortion pressure group. In November of 1972, in an attempt to find out what the military community thinks, the Army Times Family Magazine conducted a survey on abortion. Of 6,360 respondents 51.4% wanted abortions legalized without restrictions and 40.7%

⁴James C. Coleman, Psychology and Effective Behavior, (Glenview, Illinois: Scott, Forsman & Co., 1969) p. 19.

wanted abortions legalized with certain restrictions. The remaining 7.9% did not want abortions legalized under any conditions.⁵ From this survey and others we might conclude that the collective conscience of America favors legalized abortion.

When euthanasia comes to mind we normally think of the terminally ill aged adult. However, history reveals that the practice has been carried out on the young. The thought of a child going through life deformed is heartbreaking. The thalidomide babies brought into focus the anguish of parents over the birth of a deformed child. In Belgium a Madame Van de Put, who had taken thalidomide during her pregnancy, gave birth to a deformed child. Mrs. Van de Put poisoned her child. She was subsequently indicted for murder. Mrs. Van de Put's husband, doctor, mother, and sister were also tried with her for complicity in the murder. Mrs. Van de Put and the others were all acquitted!⁶ And the community celebrated! Why? Evidently because the community thought that their motives were good. It is generally assumed that the motives of those who kill deformed children are unselfish and benevolent, and that they are only concerned with sparing the sufferings of the child. But is this really so? Who is being spared the sufferings? The child or the parent?

The other factor which contributes to society's present

⁵Margaret Eastman and Jim Sample, "The Military Abortion Maze," The Army Times. Nov. 1, 1972, p. 7.

⁶Norman St. John-Stevan, The Right to Life (New York, New York: Holt, Rinehart & Winston, 1964) pp. 6-16.

ethical system is personal comfort. This motive impacts most directly on the attitudes toward abortion and euthanasia. Abortion terminates an unwanted pregnancy. This is pure and simple an attempt to alleviate the consequences brought on by the actions of some adult. Rape, incest, drugs and mental disorders are given as justification for abortion. However, the request for abortions far exceeds the incidence of the above mentioned criteria. It is too often the burden of the future responsibility of caring for the unborn child that becomes the real motive for those seeking an abortion. The unborn child is then condemned without any consideration of his potential, except that he may become a drag on his parents. The following story illustrates how wrong we can be when we minimize the potential of an unborn human being.

"One doctor to another: "about the terminating of a pregnancy, I want your opinion. The father was syphilitic. The mother was tuberculous. Of the four children born, the first was blind, the second died, the third was deaf and dumb, the fourth was also tuberculous. What would you have done?" "I would have ended the pregnancy." "Then you would have murdered Beethoven."?

I am afraid that many of us would have agreed with the second doctor. Where is the consistency of our ethics when we will deny the potential of an unborn child but defend the criminal claiming, based on his "potential for good" that he is essentially good but that it is society which has made him appear to be bad?

⁷Ibid. p. 16.

We are willing to condemn mankind but not an individual man.
I makes us too uncomfortable to face an individual man.

In the practice of euthanasia it is all to often the comfort of the healthy who must perform the necessary caring functions which dictates the practice of euthanasia. The decision as to when a man is to die calls for a judgment on the part of the executioner that indeed the patient really wants to die, or should die. If a patient agrees, it would seem to be the correct thing to do. But what if he changes his mind at the last minute? We have acknowledged the fact that execution is irrevocable, so what do we do if the patient changes his mind as a toxic substance begins to take effect? It is the fact of irrevocability that makes us hesitant to carry out the sentence of a judge and jury after they have heard and considered all of the facts of the case. Yet, we are quite willing to let the same crucial decision in euthanasia be made by a busy doctor or an emotionally involved family. It seems to me that we are about to make saneness, consciousness, and comfort the criteria for being allowed to live. If this is true, then we are only a step away from making productivity the criteria for anyone having a right to life.

I recall an 82 year old parishioner who had a weak heart when he was hospitalized for a malignancy. He was terminal and he knew it. On a visit to him some two months before he died he said to me, "Pastor, I know that I am going to die. I am ready to go because I know that Heaven awaits me on the other

side of death. I know that I won't hurt anymore. I made the doctor promise that he won't put bottles and gadgets on me to keep me alive. But that he will only try to ease my pain." Then with trembling lips he said, "But Brother Jim, I don't want to die. I am afraid of that moment of death." We talked often in the next six weeks before he became comatose, he did not change his mind on either point, i.e. the directions that he gave for his care or his desire to go on living.

Our ethics on execution are warped. If we think in terms of the criminal we want to appear humane and gracious. We are committed to an ethic of care for the criminal, make him comfortable, rehabilitate him and restore him to society. But for the unborn child there is no equal concern. To the fetus we say, "What right do you have to live? Neither mother, nor father, nor society wants to be burdened with caring for you. Therefore, we will terminate you." The rationalization is that the abortion is for the benefit of the child because we don't want it to grow up experiencing the mental suffering of feeling unwanted. While at the same time we show our concern and care for the handicapped, the chronically ill and the terminally ill by promising them a comfortable death. But do we have pangs of conscience? If a man driven by emotional anguish wants to commit suicide then we feel compelled to stop him. Here again, we betray our inconsistency. We want to spare the cripple from mental anguish so euthanasia is advocated. But the man driven by mental anguish to take his own life must be prevented

from carrying out his schemes for self-destruction.

The only thread of consistency that I can find in the new ethics of execution is one of shunning responsibility. In the case of capital punishment we don't want the responsibility of making a judgment that condemns a man to death, no matter how horrendous his crime. Secondly, we don't want the responsibility of caring for an unwanted or possibly deformed child. Finally we don't want the responsibility and burden of standing by and caring for the hopelessly handicapped, the chronically or the terminally ill. We desire to look good so we propose a legitimization, a high sounding but inconsistent ethic, to alleviate the guilt that results from our irresponsibility. We have a collective ethic which refuses to take a long look at the end result of our present attitudes. It seems to me that the logical outcome of our current actions will be the evolution of a super-selfish youth and health orientated society which lives by the axiom that the end justifies the means.

SELECTED BIBLIOGRAPHY

BOOKS:

- Barnette, Henlee H. Introducing Christian Ethics, Nashville: Broadman Press, 1961.
- Broom, Leonard and Selznick, Philip, Sociology, Evanston: Row, Peterson and Co. 1955.
- Bruce, W. S., The Ethics of the Old Testament, Edinburgh: T. & T. Clark, 1960.
- Johnson, Oliver A. ed. Ethics, New York: Holt, Rinehart and Winston, 1958.
- McClellan, Grant S. ed., Capital Punishment, New York: The H. W. Wilson Company, 1961.
- St. John-Stevas, Norman, The Right to Life, New York: Holt, Rinehart and Winston, 1963.

NEWSPAPER ARTICLES:

- The New York Times. "Questions left unanswered by Ruling on Abortion" Jan. 24, 1973.
- The Army Times. Family Magazine Section, "The Abortion Maze" Nov. 1, 1972.